

RE ST CHAD SADDLEWORTH

JUDGMENT

delivered on 16 August 2018

Introduction

1. By their Petition dated 4 April 2018 Revd Canon Sharon Jones, the Team Rector, and Alison Norah Coates and Ian Brett, the Churchwardens [‘the Petitioners’], seek a faculty to introduce 8/10 sheep into the graveyard at St Chad Saddleworth. Such has nil cost because it is proposed to use electric sheep fencing which was already retained from previous use.

2. Although the present church [which is listed Grade II*] dates from 1830, there has been a church on the present site since around 1215 and for 500 years it was the only church in Saddleworth. During this period the population of Saddleworth considerably increased and thus all the burials took place in the graveyards. The graveyards are thus of much interest to historians and genealogists and there are many requests from genealogists for information about and visits to graves.

The salient background facts

3. The Statement of Need in support of the application states:

‘St Chad’s PCC is responsible for the upkeep of 3 moorland graveyards, the one under consideration at the present time dates from the late 1800s to the 1950s and is situated at a distance from the Church building. It covers approximately 3.5 to 4 acres and contains in the region of 5,500 graves. It is still used, very occasionally, for burials in existing graves and interment of ashes. Graves are still visited by family members and by genealogists from the UK and further afield. The PCC cannot afford to pay for maintenance, nor do we have the man/woman power to keep the vegetation under control, consequently and understandably we receive many complaints. The other two yards are somewhat smaller but are also overgrown.

Some years ago, with the help of a local farmer, we installed sheep in the graveyard, enclosed within electric sheep fencing, and thus worked well until the sheep were temporarily moved in 2001 and during their absence foot and mouth disease broke out and therefore the sheep could not return for a considerable time.

After employing the services Community Payback, which was not entirely successful, and local volunteers, we now find ourselves on the receiving end of complaints again.

If this exercise proves successful, we would introduce sheep into the graveyard known as the Lower Graveyard.

...

We are doing our best to `care for God`s acre` but like our complainants we are distressed and embarrassed at the state of the graveyards and feel that our only action is to introduce sheep.`

4. The application has the support of the Parochial Church Council [`PCC`] in that on 11 January 2018 the PCC unanimously agreed to seek a faculty:

`to introduce a small flock of up to 10 sheep into the New Graveyard in order to keep the vegetation under control and if this is successful to repeat in the Lower Graveyard and the Old Graveyard. The flock to be enclosed within electric sheep fencing.`

5. In the documentation sent to the Diocesan Advisory Committee [`DAC`] the proposals were described thus:

`Introduction of 8/10 sheep into the Graveyard. The sheep would be on loan from and tended daily by a local farmer. The PCC would provide electric fencing to enclose the small flock in an area of approximately 25yds x 25yds. This fencing would be moved regularly at the discretion of the farmer. Notices will be placed on the fencing and at the graveyard entry points, alerting visitors to the fact that sheep are in the yard and enclosed in electric fencing.`

6. At its meeting on 2 February 2018 the DAC recommended the proposals for approval by the Consistory court.

7. The Public Notice was displayed between 28 February 2018 and 31 March 2018. Such Public Notice referred to the proposed `introduction of 8/10 sheep into the Graveyard.

8. Neither the Petition nor the Public Notice made it clear that the application was to introduce sheep into the New Graveyard. However, it is important that I record that I determine this application on the basis that it relates solely to the New Graveyard and not to the Lower Graveyard nor the Old Graveyard. If appropriate in the future, a further application will be required to be made in relation to such other graveyards.

The response from Mrs Cummings

9. In response to the Public Notice Mrs Christine Anne Cummings sent an email to the Diocesan Communications team on 28 March 2018 in the following terms:

`On a visit to the Saddleworth cemetery today I saw the notification ... of your intention to introduced 8-10 sheep into the grave yard. I regularly visit the cemetery to attend my husband`s grave. ... We have a great deal of trouble with animals, sheep, horses etc getting into the premises. There are no secure boundaries. The animals eat all the fresh flowers and it is soul destroying when you have placed fresh flowers on the grave only to find all the tops have been removed by the sheep etc. If you introduce the sheep they will simply devour all the fresh flowers and only eat the grass when all the flowers are gone.

In the past the grass has been left to overgrow and as a result gravestones, my husband`s included, have been damaged. I am assuming that the intention to introduce sheep is to keep the grass tidy. At the moment letters are being sent to individual grave holders to ask them to remove shrubs, flowers etc beyond a metre from the headstone. Apparently this is to enable the grass to be cut properly. I am sure if you wrote to these individuals and asked if they would be prepared to pay a small sum say around £10 (ten pounds) per annum for maintenance they would be more than happy to do so and your problem would be solved, You would accrue sufficient funds to employ a person on a two weekly basis to cut the grass or even weekly during the summer months.`

10. This email was forwarded to the Diocesan Registrar who advised Mrs Cummings that the Petition for a faculty had not yet been received but that her comments were noted.

11. On 1 May 2018 Mrs Cummings sent a further email to the Diocesan Registrar in which she stated:

`I would point out that I visited my late husband`s grave again today only to find that stray sheep from a surrounding field have eaten the flowers once again. The sheep will not keep the grass down they will wander everywhere in search of fresh flowers and as a result the grass will still have to be cut manually.`

12. It should be noted that the sheep Mrs Cummings refers to had escaped from a surrounding field and not the New Graveyard. Having recently visited Saddleworth for reasons unconnected with this application, I am well aware that it is a delightful rural area where the escape of sheep from fields is, in reality, a hazard of everyday life.

13. In both her emails Mrs Cummings commented that, although she herself had become aware of the Public Notice, such Notice was not displayed at each of the gates to each of the churchyards. The certificate of publication signed by the Team Rector confirms that the proposals were displayed on the noticeboard inside the church and outside the church on the graveyard gates. In such circumstances I am satisfied that the Public Notice was properly displayed.

14. Mrs Cummings` emails were referred to me and I was satisfied that she had `sufficient interest` to qualify as an objector, given that her husband was buried in the churchyard.

15. It was in such circumstances that the Diocesan Registrar asked Mrs Cummings whether she wished to file formal written particulars of objection or whether, alternatively she wished me to take her views into account in reaching my decision without becoming a party to the proceedings.

16. Although in her email sent on 18 May 2018 Mrs Cummings confirmed that she wished me to take her views into account in reaching my decision, she did not expressly address whether she wished to become a party to the proceedings and she subsequently filed formal written particulars of objection. Her objection stated:

`As stated in several emails the sheep will eat all the fresh flowers. It is disrespectful to deliberately introduce sheep into consecrated ground`

The response of the Petitioners to Mrs Cummings` objection

17. In their Reply dated 9 June 2018 the Petitioners stated:

1. I am informed by Saddleworth Parish Council that Mrs Cummings' late husband was interred in their cemetery in 2014, as distinct from St Chad's graveyard. The two are in fairly close proximity, but separated by stone walls surrounding our older yard. We have a small extension to the old yard but this area is maintained in a tidy condition by church volunteers and it is not intended to put the sheep in this extension.

2. The objection 'that sheep will eat all the flowers'. The objector doesn't appear to understand that the flock will be enclosed within electric sheep fencing in the old graveyard, some distance from the Parish Council's cemetery, and will be visited daily by the shepherd, or in his absence, by responsible members of the congregation. The sheep will be placed in areas, and there are many, where graves are not visited and therefore devoid of flowers.

3. 'It is disrespectful to deliberately introduce sheep on consecrated ground'. Grazing sheep was a traditional method of managing churchyards. I personally have seen sheep, unfenced, in the graveyard at Cartmel Priory. St Chad's Church has no funds for keeping the vegetation under control and grazing sheep is an ecological and economical way of doing so.'

18. The Petitioners' Reply continued by addressing whether the Public Notice had been displayed appropriately and whether Mrs Cummings had a sufficient interest to qualify as an objector and I have already dealt with such matters above.

Written representations

19. Since I considered that determination of the Petition on consideration of written representations was expedient, the Diocesan Registrar invited both the Petitioners and Mrs Cummings to agree in writing to such a course.

20. Both Mrs Cummings and the Petitioners have consented to the determination of the Petition on consideration of written representations. Mrs Cummings did so on 27 July 2018 and Mrs Lily Hopkinson did so on behalf of the Petitioners on 30 July 2018.

21. Although both parties were given the opportunity to file any further representations within 14 days, neither the Petitioners nor Mrs Cummings did so although in her letter to the Diocesan Registrar dated 6 August 2018 Mrs Hopkinson stated:

`The only additional information we would offer is that at the beginning of July we suffered two fires in the graveyard where we hope to put the sheep and as a result of this we invited EIG [their insurers] to send a representative to survey the damage. He came on 31st July and his first comment on walking into the graveyard was - `You want to get some sheep in here.`

Conclusions

22. Given that I have adjudged that the determination of this Petition on consideration of written representations was expedient and that both the Petitioners and Mrs Cummings have consented to my doing so, I now determine this Petition on the basis of the parties` written representations.

23. It is clear from the Statement of Need and the PCC resolution that it is desired to introduce 8/10 sheep into the New Graveyard. Unfortunately, the Public Notice did not make this clear.

24. I am satisfied that Mrs Cummings` deceased husband is interred in the Saddleworth Parish Council cemetery and not in the New Graveyard. I have no doubt that when Mrs Cummings sent her emails to the Diocesan Registry and made her objection to the Petition she erroneously believed that it was desired to introduce sheep into the graveyard in which her husband was interred. This may well have been because the Public Notice did not clearly state to which graveyard this Petition related.

25. The Parish is in a difficult situation. It has three large moorland graveyards but cannot afford to pay for them to be maintained and the fact that they are consequently overgrown has given rise to complaints which it accepts are justified. It therefore should reasonably take some action to remedy the currently unsatisfactory position. In such circumstances it believes that the use of a limited number of sheep to keep the vegetation under control is a sensible solution. In a rural area such as Saddleworth, I entirely agree that this is an appropriate thing to do. Indeed, I note the recent fires in the churchyard and am bound to observe that the risk of such fires would have probably been substantially diminished if the vegetation in the churchyard had been kept under control.

26. In her Objection Mrs Cummings raises two points: firstly, that the sheep will eat the flowers and secondly, that it is disrespectful to introduce sheep into consecrated ground.

27. As to Mrs Cummings` first point, whilst I accept that sheep will readily eat flowers if they are available, the Petitioners say that the sheep will be placed in areas

in the New Graveyard where the graves are not visited and which are devoid of flowers. Given that this is a rural area I think that this is a sensible safeguard which mitigates any concerns Mrs Cummings may have, although of course in any event her husband is not in the New Graveyard. He is interred in a *different*, albeit adjacent graveyard into which no sheep will be introduced pursuant to any faculty which I might grant.

28. As to Mrs Cummings' second point, I do not believe that in a rural area such as Saddleworth it is disrespectful to allow a limited number of sheep to graze in a controlled manner suggested by the Petitioners in this churchyard.

29. Although it may be argued that there is a possibility that the sheep may escape from the New Graveyard and go into other adjacent graveyards, it seems to me that this is a risk which those who choose to reside in delightful rural areas such as Saddleworth inevitably subject themselves too. I do not believe that this is a sufficient reason to not grant the faculty sought.

30. In all the circumstances I am satisfied that it is appropriate to introduce 8-10 sheep in the New Graveyard and that such should be enclosed within electric sheep fencing and moved around the churchyard as is appropriate. However, for the avoidance of any doubt I will impose two conditions: firstly, that before the introduction of the sheep into the New Graveyard the Petitioners must erect such warning notices as to the presence of the electric sheep fencing as their insurers shall require; and secondly, that the Petitioners shall make all reasonable efforts to ensure, in so far as is possible, that flowers left on graves are not available to be eaten by the sheep.

31. If it is necessary for me to do so, I give permission for the Team Rector and PCC to enter into the draft Grazing Licence within the papers sent to me.

32. In accordance with the practice of this court the Petitioners must pay the costs of the determination of this Petition.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Manchester